

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

OCTOBER TERM, 1903.

No. 1356.

248

POWHATAN W. ROBERTSON, AGENT, APPELLANT,

vs.

LEONIDAS B. SOUTHERLAND.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED AUGUST 14, 1903.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1903.

No. 1356.

POWHATAN W. ROBERTSON, AGENT, APPELLANT,

vs.

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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
Caption	<i>a</i>	1
Declaration	1	1
Affidavit of P. W. Robertson	2	2
Undertaking in attachment.....	3	3
Writ of attachment	4	3
Particulars of demand.....	5	4
Motion to quash writ of attachment	5	4
Affidavit in support of motion to quash writ of attachment.....	6	5
Certificate of justice of the peace on appeal	7	6
Undertaking on appeal	9	7
Motion to dismiss appeal	10	8
Memorandum as to dismissal of appeal, &c.....	11	8
Memorandum as to vacation of order dismissing appeal, &c.....	11	8
Appeal dismissed; papers directed to be returned to justice of the peace; appeal and penalty of appeal bond fixed.....	11	9
Citation.....	13	9
Memorandum: Appeal bond filed.....	14	10
Clerk's certificate	15	10

In the Court of Appeals of the District of Columbia.

POWHATAN W. ROBERTSON, Agent, Appellant, }
vs. } No. 1356.
 LEONIDAS B. SOUTHERLAND. }

a Supreme Court of the District of Columbia.

POWHATAN W. ROBERTSON, Agent, Plaintiff, }
vs. } No. 46267. At Law.
 LEONIDAS B. SOUTHERLAND, Defendant. }

UNITED STATES OF AMERICA, } ss :
District of Columbia,

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Declaration.*

Filed June 8, 1903.

DISTRICT OF COLUMBIA, *To wit:*

In justice's court, before Samuel C. Mills, one of the justices of the peace in and for the District aforesaid, this 14th day of May, 1903, in the case of—

POWHATAN W. ROBERTSON, Ag't, Plaintiff, }
vs. } Law. No. 2318.
 LEONIDAS B. SOUTHERLAND, Defendant. }

The plaintiff sues the defendant for that the plaintiff let to the defendant apartment No. 801, in the Ethel-Towers apartment house, situated at 15th and L streets, N. W., Washington, D. C., to hold for one year, from the first day of October, 1902, at \$40.00 per month, payable in advance, \$20.00 of which rent is due and unpaid, to wit: the rent due on the 1st day of May, 1903, and the rent for the months of June, July, August and September, 1903, will fall due respectively on the 1st day of each of said months. And the plaintiff claims the sum of \$180.00 as will more fully appear by reference

to the particulars of demand hereunto annexed, besides costs of this suit.

LEO SIMMONS,
Attorney for Plaintiff.

The defendant to plead hereto on the 29th day of May, 1903, at 10 o'clock, a. m., otherwise judgment.

Affidavit.

DISTRICT OF COLUMBIA, *To wit:*

2 In justice's court before Samuel C. Mills, one of the jus-
tices of the peace in and for the District aforesaid, in the case
of—

POWHATAN W. ROBERTSON, Ag't, Plaintiff, }
vs. } Law. No. 2318.
 LEONIDAS B. SUTHERLAND, Defendant. }

Personally appeared Powhatan W. Robertson, the plaintiff in the above entitled cause, and made oath that he is the plaintiff, and that the defendant, Leonidas B. Sutherland, is tenant as set forth in the declaration, and that \$20.00 the money he claims therein to be payable to him by the defendant is for the rent of said premises due and unpaid at the time of the filing of said declaration, exclusive of all set-offs and just grounds of defense, that the remainder of the amount claimed, will become due in installments of \$40.00 each, on the 1st day of June, July, August and September, 1903, and to secure which the plaintiff has a tacit lien upon the personal chattels of the defendant, and that the defendant is about to abscond or permanently remove from the District of Columbia or to sell all or some part of said chattels.

POWHATAN W. ROBERTSON.

Subscribed and sworn to before me this 13 day of May, 1903.

SAM'L C. MILLS, J. P. [SEAL.]

the plaintiff's lien for rent of the premises held by the defendant, as plaintiff's tenant to the value of \$180.00 the amount of plaintiff's demand against the defendant for said rent, as shown by the plaintiff's affidavit in the cause, and as claimed in his declaration, besides cost of suit. And should you attach said chattels in the hands of any other person, warn to appear before this court on the 29 day of May, A. D. 1903 at 10 o'clock — m., to show cause why said chattels, so attached, should not be condemned towards satisfaction of the plaintiff's demand. And then have there this writ so endorsed as to show when and how you have executed it.

Witness my hand and seal, this 13 day of May, A. D. 1903.

SAM'L C. MILLS. [SEAL.]

5

Particulars of Demand.

Rent balance for month of May 1903.....	\$20.
“ that will become due for months of June, July, August and September 1903 as per agreement between the parties.....	160.00
	<hr/>
	180.00

Marshal's Return.

MAY 13'', 1903.

Summoned as within directed.

AULICK PALMER,

U. S. Marshal,

By CARLIN S. ESKRIDGE, *Dep.*

Motion to Quash Writ of Attachment.

Filed June 8, 1903.

In Justice's Court, District of Columbia, before Samuel C. Mills, Esquire, One of the Justices of the Peace in and for the District Aforesaid.

POWHATAN W. ROBERTSON, Agent,	} Law. No. 2318, 46267.
vs.	
LEONIDAS B. SOUTHERLAND.	

Comes now the defendant, by his attorney, and moves the court to quash the writ of attachment in the above entitled cause upon the following grounds:

- 6 1. The affidavit accompanying the plaintiff's declaration is not sufficient in law ;
2. The said affidavit does not state any sufficient ground for the said attachment ;

3. It is not true, as stated in the said affidavit, that the defendant is about to abscond or permanently remove from the District of Columbia ;

4. It is not true, as stated in the said affidavit, that the defendant is about to sell all or any part of the chattels therein mentioned.

HENRY E. DAVIS,
Attorney for the Defendant.

Affidavit in Support of Motion to Quash Attachment.

Filed June 8, 1903.

In Justice's Court, District of Columbia, before Samuel C. Mills, Esquire, One of the Justices of the Peace in and for the District Aforesaid.

POWHATAN W. ROBERTSON, Agent,	}	Law. No. 2318, 46267.
vs.		
LEONIDAS B. SOUTHERLAND.		

DISTRICT OF COLUMBIA, ss :

Before me, a notary public in and for the District aforesaid personally appeared Leonidas B. Southerland, who being first duly sworn deposes and says that he is the defendant in the above
7 entitled cause and that it is not true, as stated in the affidavit of the plaintiff accompanying his declaration, that the defendant is about to abscond or permanently remove from the District of Columbia, and it is not true that the defendant is about to sell all or any part of the chatties in the said affidavit mentioned.

LEONIDAS B. SOUTHERLAND.

Subscribed and sworn to before me this 15th day of May, A. D. 1903.

[SEAL.]

CHARLES H. FICKLING,
Notary Public, D. C.

Certificate of a Justice of the Peace on Appeal.

Filed June 8, 1903.

In Justice's Court of the District of Columbia, before Samuel C. Mills,
a Justice of the Peace.

POWHATAN W. ROBERTSON, Plaintiff,	}	Action for Attachment for \$180.00. No. 2318, 46267.
vs.		
LEONIDAS B. SOUTHERLAND, Defendant.		

Date.	Proceedings.
May 13, 1903.	Summons and copies issued returnable May 29, 1903.
" " "	Returned summoned as directed signed Aulick Palmer U. S. M. by Carlin S. Eskridge, deputy.
" 15, "	On motion of defendant to quash the attachment, and by agreement hearing of said motion set for Tues- day May 21, 1903 at 11 a. m. and by agreement further continued to May 25, 1903 11 a. m.
May 25, 1903.	Parties appeared after aurgament heard attachment was quashed in accordance with the motion of de- fendant. Plaintiff appealed—Bonds filed May 28, 1903 T. Franklin Schneider and Victor Anderson as sureties.

[SEAL.]

SAM'L C. MILLS, J. P.

DISTRICT OF COLUMBIA, } ss :
Washington County, }

I, Samuel C. Mills, one of the justices of the peace in and for the
said county and District, do hereby certify that the foregoing is a
true statement from my docket of all the proceedings had before
me in the above cause, and that the annexed are all the original
papers therein.

Given under my hand and seal this 28th day of May, A. D. 1903.

[SEAL.]

SAM'L C. MILLS, J. P.

Costs paid by plaintiff.....	\$11.25
" " " app.....	1.00
	<hr/>
	\$12.25

9

Undertaking on Appeal.

Filed June 8, 1903.

DISTRICT OF COLUMBIA, *To wit:*

In justice's court, before Samuel C. Mills, one of the justices of the peace in and for the District aforesaid, this — day of —, 189—, in the case of—

POWHATAN W. ROBERTSON, Agent, Plaintiff,	} At Law. 2318, No.
<i>vs.</i>	
LEONIDAS B. SOUTHERLAND, Defendant.	46267.

The plaintiff Powhatan W. Robertson, ag't desiring to appeal from the judgment or order of the justice of the peace rendered against him in the above-entitled cause, on the 25th day of May, 1903, to the supreme court of the District of Columbia, he and Victor Anderson and T. Franklin Schneider his sureties hereby appearing and submitting to the jurisdiction of the said supreme court, undertake jointly and severally to pay and satisfy whatever final judgment may be recovered against them in the said court, which judgment may be entered against them jointly or either of them separately in this case.

Given under our hands this 27th day of May, 1903.

POWHATAN W. ROBERTSON, *Agent.*
T. FRANKLIN SCHNEIDER.
VICTOR ANDERSON.

Witness:

LEO SIMMONS as to Robinson.

Witness:

O. SIM CUNNINGHAM as to T. F. Schneider.
HOWARD ETCHISON as to Anderson.

Taken and acknowledged before me and by me approved this 28th day of May, A. D. 1903.

SAM'L C. MILLS, *J. P.* [SEAL.]

10

Motion to Dismiss Appeal.

Filed June 16, 1903.

In the Supreme Court of the District of Columbia.

POWHATAN W. ROBERTSON, Agent, Appellant,	}	Law. No. 46267.
vs.		
LEONIDAS B. SOUTHERLAND, Appellee.		

Comes now the appellee, by his attorney, appearing specially and for the purposes of this motion only, and moves the court to dismiss the appeal in the above entitled cause, upon the ground that, as appears by the record and proceedings in the said cause, the certain judgment of Samuel C. Mills, Esquire, justice of the peace, supposed to have been appealed from is a judgment quashing a writ of attachment before judgment, and not a final judgment nor a judgment that the property attached was exempt from such attachment or is the property of a claimant thereto other than the defendant.

HENRY E. DAVIS,
EDW. B. KIMBALL,
Attorneys for Appellee.

Leo Simmons, Esq., attorney for appellant.

SIR: Please take notice that the foregoing motion will be called up for hearing before the justice holding criminal court No. 2, on Friday June 19, 1903, at the opening of the court or as soon thereafter as counsel can be heard.

Respectfully,

HENRY E. DAVIS,
EDW. B. KIMBALL,
Attorneys for Appellee.

11

Memoranda.

June 19, 1903.—Appeal dismissed at plaintiff's costs. Appeal noted.

June 24, 1903.—Order of June 19, dismissing appeal, vacated and cause certified to criminal court No. 2.

Supreme Court of the District of Columbia.

WEDNESDAY, June 24, 1903.

Session resumed pursuant to adjournment, Mr. Justice Barnard, presiding.

* * * * *

The following cases were heard by Justice Barnard holding criminal court No. 2.

* * * * *

POWHATAN W. ROBERTSON, Agent, Plaintiff,	} At Law. No. 46267.
Appellant,	
vs.	
LEONIDAS B. SOUTHERLAND, Defendant.	}

Come here as well the plaintiff as the defendant by their respective attorneys, and thereupon the defendant's motion to dismiss the appeal herein coming on to be heard, is granted, and it is considered that the appeal herein be, and it is hereby dismissed at the costs of the plaintiff and Victor Anderson and T. Franklin Schneider, his sureties, and the court orders the papers to be returned to the justice of the peace whence they came with directions to proceed thereon according to law.

The plaintiff notes an appeal to Court of Appeals and the penalty of the bond to operate as a supersedeas is fixed at one hundred dollars. To the above ruling of the court the attorney for the plaintiff notes an exception.

13 In the Supreme Court of the District of Columbia.

POWHATAN W. ROBERTSON, Agent,	} At Law. No. 46267.
vs.	
LEONIDAS B. SOUTHERLAND.	

The President of the United States to Leonidas B. Southerland,
Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein, under and as directed by the rules of said court, pursuant to an appeal noted in the supreme court of the District of Columbia, on the 24th day of June, 1903, wherein Powhatan W. Roberston, agent, is appellant, and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Co- lumbia.	Witness the Honorable Harry M. Cla- baugh, chief justice of the supreme court of the District of Columbia, this 27th day of June, in the year of our Lord one thousand nine hundred and three.
---	--

J. R. YOUNG, *Clerk*,
By W. E. WILLIAMS,
Ass't Clerk.

Service of the above citation accepted this 29th day of June, 1903, reserving, however, all questions as to the right of appeal.

HENRY E. DAVIS,
Attorney for Appellee.

10 POWHATAN W. ROBERTSON, AGENT, VS. L. B. SOUTHERLAND.

[Endorsed:] No. 46267 Law. Powhatan W. Robertson, agent,
vs. Leonidas B. Southerland Citation. Issued Jun- 27 1903.

14

Memorandum.

July 10, 1903.—Appeal bond filed.

15

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, {
District of Columbia, } ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 14, inclusive, to be a true and correct transcript of the record, as per rule 5 of the Court of Appeals of the District of Columbia, in cause No. 46,267, at law, wherein Powhatan W. Robertson is plaintiff, and Leonidas B. Southerland is defendant, as the same remains upon the files and of record in said court.

Seal Supreme Court of
the District of Co-
lumbia.

In testimony whereof, I hereunto sub-
scribe my name and affix the seal of said
court, at the city of Washington, in said
District, this 30th day of July, A. D. 1903.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1356. Powhatan W. Robertson, agent, appellant, vs. Leonidas B. Southerland. Court of Appeals, District of Columbia. Filed Aug. 14, 1903. Robert Willett, clerk.

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

OCT 19 1903

Robert W. Williford
CLERK

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1903.

No. 1356.

POWHATAN W. ROBERTSON, AGENT, APPELLANT,

vs.

LEONIDAS B. SOUTHERLAND.

BRIEF FOR APPELLANT.

LEO SIMMONS,

For Appellant.

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1903.

No. 1356.

POWHATAN W. ROBERTSON, AGENT, APPELLANT,

vs.

LEONIDAS B. SOUTHERLAND.

Statement of Case.

On October 1, 1902, the appellant Robertson, agent leased to the appellee Southerland, for a term of one year, certain apartments in the Ethel-Towers Apartment House, situated in the city of Washington, District of Columbia, at the rate of \$40 per month, payable monthly in advance (Rec. p. 1).

On May 14, 1903, Robertson, learning that the appellee Southerland was about to remove from the city, sued out an attachment under sections 1229 and 1230 of the Code, claiming the sum of \$180, \$20 of which was then due and unpaid; the remaining sum being for rent that would become due, under the lease, for the months of June, July, August, and September, 1903.

On May 15, the defendant Southerland filed a motion to quash the attachment (Rec. pp. 4 and 5). After hearing said motion the justice of the peace dissolved the attachment, and thereupon the plaintiff appealed to the Supreme Court of the

District of Columbia, under section 30 of the Code, which appeal was fully perfected within the time allowed by the Rules of Practice, and, on June 8, 1903, was regularly docketed in said Supreme Court and entered upon the trial calendar thereof (Rec. pp. 6 and 7). On the 16th day of June, 1903, the defendant Southerland filed his motion to dismiss said appeal upon the grounds that the order of the justice of the peace was not a final judgment (Rec. p. 8). The case being certified to Criminal Court No. 2 for hearing, Mr. Justice Barnard, holding that court for the trial of civil cases, sustained the motion of the defendant Southerland and ordered the appeal dismissed with *cost* (Rec. p. 9), and from which order the plaintiff appealed to this court.

Errors.

The Supreme Court of the District of Columbia erred in holding that the order of the justice of the peace dissolving the attachment, issued to enforce the plaintiff's tacit lien for rent, was not a final order and appealable to that court.

The court below erred in dismissing the plaintiff's appeal from the order of the justice of the peace dissolving his attachment and in not proceeding to hear said case on its merits.

ARGUMENT.

The question here raised is whether or not an order of a justice of the peace for the District of Columbia, dissolving an attachment for rent due and unpaid, levied against the goods of a tenant on the premises, is appealable to the Supreme Court of the District of Columbia, under section 30 and such other parts of the Code as is applicable.

The court below acted upon the case as if it were an ordinary attachment for debt before judgment, and made no distinction between such an attachment and one levied to

enforce the landlord's tacit lien for rent against tenant's goods upon the premises, as provided by section 1229 of the Code.

It seems to me that in either case, above mentioned, an appeal will lie, for section 30 of the Code specifically provides for an appeal from a final order—

“either party who may think himself aggrieved by any judgment *or other final order* of a justice of the peace may appeal, etc.”—

are the words of the section.

Section 226 of the Code gives the right to appeal to this court, upon an order of the Supreme Court of the District of Columbia, dissolving an attachment of any kind, and undoubtedly it was the intention of the framers of the Code, when they used the words “or other final order” in section 30, to provide for just such a case as the one at bar; for if an order dissolving an attachment, and releasing goods which have been seized and taken under execution is not final, I can not see what kind of an order, other than a final judgment disposing of the whole case, can be considered final.

The order dissolving the attachment in this case was not only a final order, but a final judgment (*American Encyclopædia of Law*, 1st ed., vol. 1, pp. 931, 932); for if the plaintiff was not entitled to enforce his lien by attachment, as provided in section 1230 of the Code, that was the end of the case, in so far as his lien for rent was concerned.

If the narrow construction placed upon section 30 of the Code by the court below is correct, it means that Congress, while giving litigants the right to appeal to this court from an order of the Supreme Court of the District of Columbia, dissolving an attachment, did not mean to do so in a similar case before a justice of the peace. In other words, the knowledge of the justice of the peace, in the opinion of the framers of the Code, was more to be relied upon, in such a matter,

than the justices of a court of record. While through mistake or inadvertence such a law may exist, yet it seems to me to place such construction on the laws in question would be clearly in contravention of the statute.

However, it is not necessary for this court to pass upon the question as to whether or not an appeal will lie from an order of a justice of the peace, dissolving an attachment, for debt, before judgment; for an attachment to enforce a lien for rent is clearly distinguished therefrom.

“Statutory liens without possession have the same virtue that existed in common law liens accompanied by possession.”

Fowler vs. Rapley, 15 Wal. 328.

In an ordinary attachment for debt there must be a judgment against the defendant before he proceeds to subject the property to execution.

“When, in a suit by attachment (for ordinary debt), the plaintiff obtains a judgment, which, by the existing law, is a lien upon the property attached, the lien of the attachment becomes merged in that of the judgment, and the only effect thereafter of the attachment lien upon the property is to preserve priority thereby acquired; and this priority is maintained and enforced under the judgment. If the plaintiff neglect within the lawful period of his judgment lien, to subject the property to execution, the lien of the attachment does not revive on the expiration of the judgment lien.”

Drake on Attachment, sec. 224.

“As the whole office of an attachment is to seize and to hold property until it can be subjected to execution, its lien is barren of any beneficial results to the plaintiff unless he obtain a judgment against the defendant, and proceed to subject the property to execution.”

Drake on Attachment, sec. 228.

Section 1229 and 1230 of the Code is identical with the statute that was in force before the Code.

Abert's Compiled Stat., sec. 316.

By section 1230 the lien may be enforced in three ways:

First, by attachment before judgment.

Second, by judgment and execution.

Third, by action against purchaser of chattels.

The suit was not begun to obtain a personal judgment.

The form of the writ in this case (Rec. pp. 4 and 5) is that which has been used in this district for years, and by that it appears that no judgment other than condemnation of the property is contemplated.

In an ordinary attachment the dissolution discharges the lien obtained by the levy; in such a case as this its effect is to destroy the lien created by statute.

Fowler *vs.* Raply, *supra*.

Drake on Attachment, sec. 411.

The following cases will in my opinion satisfy the court that the order dissolving the attachment was an appealable order.

Williams *vs.* Hutchinson, 26 Fla. 514.

Jeffrey *vs.* Coleman, 20 Fla. 538.

U. S. *vs.* Killman, 3 McA. 76.

Danforth *vs.* Cross, 4 Iowa, 230.

Kurtz *vs.* Dun, 36 Ark. 648.

Hectman *vs.* Sharp, 3 McA. 90.

Cross *vs.* Goldsmith, 4 Mackey, 126.

Richmond *vs.* Cake, 1 D. C. App. 447.

Stroheim et al. *vs.* Deimel et al., 77 Fed. Rep. 802.

This right, so far as I can find, has never been questioned in Maryland, but it appears to be the general practice there.

In the case of Jeffreys *vs.* Coleman, 20 Fla., *supra*, the court said (Rec. p. 538):

“ We have here an appeal from an order dissolving the attachment, treating it as a final judgment upon the attachment proceeding. Is it a final judgment from which an appeal will lie?

“ The statute says if either party shall feel aggrieved by a final judgment, sentence, or decree, he may appeal. This suit was commenced by summons, and the writ of attachment was obtained as an ancillary proceeding for the purpose of securing a lien upon the defendant's property, to satisfy the judgment when obtained. The dissolution of the attachment put an end to that proceeding, but did not affect the progress of the suit upon the cause of action. Nothing further could be done under the attachment proceeding. The judgment dissolving the attachment having extinguished the plaintiff's lien, the defendant was entitled to a return of his property seized. It was not merely interlocutory; nothing remained to be done to extinguish the lien. That litigation was terminated and settled all the rights of the parties involved in it. A decree or order is final and within the provisions, allowing an appeal, which is conclusive, as to its subject or object.”

Baker vs. Lehman, Wright, Ohio, 522.

Ware vs. Richardson, 3 Md. 505, etc.

In *Ware vs. Richardson*, 3 Md., the court said:

“ An order or decree finally settling any disputed right or interest of the parties is a final decree and as such will warrant an appeal.”

In *Williams vs. Hutchinson*, 26 Fla., supra, the attachment proceedings were ancillary to the personal action in assumpsit, instituted contemporaneously, and the appeals were from an order dissolving the attachment. The court approving 20 Fla., said, p. 516:

“ Where an attachment is not ancillary to the common law personal action, or, in other words, where the suit is commenced by attachment alone,

there is no personal action until the defendant pleads, and hence, up to that point, the attachment proceedings constituted the only suit or action in existence that can be dismissed.

"Though it be true that a technical order of dismissal will, as a matter of form, more fully meet the words of the statute, still we are altogether unable to see that its substantial requirements of what is necessary to finally abate and dismiss the action are not as perfectly met by the order of dissolution, etc."

Same case, pages 516 and 517.

"Where the attachment is ancillary to the personal action, the effect of a dissolution of the attachments in abating the attachment proceedings is the same as if there was no personal action, and the fact that such dissolution whenever made has no effect to abate the personal action is immaterial in so far as the abatement of the attachment proceeding is concerned."

The mode of procedure in this case is sustained by the United States Supreme Court in *Fowler vs. Rapley*, 15 Wall. 328, *supra*, and *Beal vs. White*, 94 U. S. 382.

Because only a part of the rent was due was no grounds for dissolving the attachment.

Jean vs. Spurvier, 35 Md. 110.

Dawson vs. Bain, 2 Gill and J. 53; 1 Gill 373.

Gross vs. Goldsmith, 4 Mackey D. C. 126.

Final order defined.

In re Rose, 80 Cal. 170.

See, also—

Higgins vs. Grace, 59 Md. 365, see p. 374.

The order appealed from should be reversed.

Respectfully submitted.

LEO SIMMONS,
For Appellant.